

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
99AG25112

Plaintiff,

v.

COMMUNITY SUPPORT, INC.,
a Nevada corporation;

Defendant.

Equity No. CE62194

PETITION IN EQUITY

FILED
POLK COUNTY, IA
09 MAY 20 AM 8:20
CLERK DISTRICT COURT

The State of Iowa ex rel. Attorney General Thomas J. Miller, through Assistant Attorney General Steve St. Clair, states as follows for its cause of action against Community Support, Inc.:

INTRODUCTION

1. Community Support, Inc. (hereinafter "CSI" or "Defendant"), a Nevada corporation with its principal place of business in Milwaukee, Wisconsin, is a professional fundraiser that contracts with charities to solicit donations through telemarketing and mail contacts of consumers nationwide, including Iowa. Such contracts typically provide that CSI retains 80 % or more of each donated dollar. The Attorney General alleges that solicitations made by CSI representatives to Iowa residents have misrepresented who is calling, where the charity is located, the percentage of donated funds that go to the charitable cause, how donations are actually used by the charity, the charity's connection to Iowa, and whether the caller is a volunteer as opposed to a paid solicitor. The laudable desire of Iowans to donate to worthy causes is thus being unfairly and deceptively exploited, and above-board fundraising efforts conducted on behalf of deserving non-profits are placed at a disadvantage in their competition for a share of the finite charitable dollars

available.

VENUE

2. Venue is proper in Polk County, Iowa, because Defendant has engaged and, upon information and belief, continues to engage in the activities that are the subject of this Petition in Polk County, Iowa. Moreover, upon information and belief Defendant does business in Polk County and one or more victims of the practices in question reside in Polk County. Iowa Code § 714.16 (10) (2009).

PARTIES

3. The Iowa Attorney General is authorized to bring this action on behalf of the State of Iowa by Iowa Code §§ 714.16 (7) and 714.16A (1) (2009).

4. CSI is a Nevada Corporation with its principal place of business in Milwaukee, Wisconsin, and with phone rooms in New Jersey, Canada, and other locales. CSI is or at relevant times has been registered pursuant to Iowa Code § 13C.2 to solicit in Iowa on behalf of the Association For Firefighters and Paramedics, Inc.; State Police Officers Council; National Vietnam Veterans Foundation, Inc.; The American Breast Cancer Foundation, Inc.; Reserve Police Officers Association; Firefighters Charitable Foundation, Inc.; and the United States Deputy Sheriff's Association, Inc.; among others. At least some of CSI's solicitation of donations in Iowa is conducted through subcontracts with, and/or employees leased from, other professional fundraisers, including Public Safety Communications, Inc., an Iowa corporation headquartered in Des Moines, Iowa.

JURISDICTION

5. The Iowa Consumer Fraud Act, Iowa Code § 714.16 (2)(a) (2009) ("the Consumer Fraud Act") provides in pertinent part:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

6. Iowa Code § 714.16 (1) provides the following definitions:

(f) "Deception" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

(n) "Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

7. Iowa Code § 714.16 (7) provides, in pertinent part:

Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.

8. In describing remedies under the Consumer Fraud Act, Iowa Code subsection

714.16 (7) provides in pertinent part as follows:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys ... which have been acquired by means of a practice declared to be unlawful by this section ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In

addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a ... permanent injunction issued under authority of this section.

9. Iowa Code §§ 714.16A (1) & (3) (2009) provide, respectively:

If a person violates section 714.16, and the violation is committed against an older person, in an action by the attorney general, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation.

As used in this section, "*older person*" means a person who is sixty-five years of age or older.

FACTUAL ALLEGATIONS

10. Plaintiff joined the relevant regulatory authorities of at least thirty other states, which upon shared information and belief had reason to investigate CSI for multiple violations of the charitable solicitations laws of the various states.

11. In February of 2009, Plaintiff Attorney General served CSI with a Civil Investigative Demand under the authority of the Iowa Consumer Fraud Act.

12. The Civil Investigative Demand was filed as part of the multi-state investigation of CSI. The states each issued an individual Civil Investigative Demand or a comparable request to CSI in or about February of 2009.

13. A Consent Judgment was negotiated between the multi-state group and CSI, and the Attorney General intends to submit that Consent Judgment, executed by both parties, in resolution of the lawsuit initiated by the instant Petition, if the Court approves.

140. Defendant operates some telephone call centers, and contracts with others, to engage in telemarketing for charitable donations.

15. In order to evaluate the content of phone solicitations directed to Iowans by CSI, it is important to recognize that telephone fundraising efforts enjoy enhanced success if prospective donors believe:

- a) that the individual soliciting the donation is himself or herself part of the charitable organization;
- b) that the call is coming from within Iowa rather than from another state, and is thus a local fundraising effort;
- c) that one's donation will stay in Iowa;
- d) that the fundraising is performed infrequently, for example, as part of an annual drive; and
- e) that a substantial portion of a donor's contribution will go to the charitable purpose that motivates the giving, rather than be devoted to the costs of operating a telemarketing business.

16. The Attorney General has acquired several recordings of solicitation calls directed to Iowans by CSI representatives, and such recordings exhibit the following unfair and deceptive features (among others):

- a) falsely stating or implying that the caller is a representative of the charitable organization, or is a volunteer, rather than a paid representative of a professional fundraising company;
- b) falsely stating or implying that the charity is located in Iowa, or has some greater connection to Iowa than is in fact the case;
- c) falsely stating or implying that the donation will provide greater local benefits than is in fact the case;
- d) falsely stating or implying that the fundraising solicitation is part of a yearly drive, rather than an ongoing effort; and
- e) falsely stating or implying that most if not all of the donor's money will go to the charitable purpose, when in fact CSI retains between about 80 % and 90 % of every dollar raised.

CONSUMER FRAUD ACT VIOLATIONS
COUNT I

17. Paragraphs 1 through 16 are incorporated herein by reference.

18. Defendants' fundraising practices violate the prohibition of Iowa Code § 714.16 (2)(a) against misleading, deceptive, unfair, and omissive acts and practices, and otherwise violate that provision of Iowa law by making misleading affirmative representations about how donations would be used.

19. Although it is not necessary to establish reliance, damages or intent to deceive to obtain injunctive relief or reimbursement under the Consumer Fraud Act (*see* paragraph 16 above), establishing these factors, particularly intent, is nevertheless relevant *inter alia* to the Court's determination of the appropriate scope of injunctive relief and the appropriate amount of civil penalties. Those acts and practices of Defendants in violation of subsection (2)(a) of the Consumer Fraud Act as alleged in this Count did in fact induce reliance on the part of consumer victims, did in fact cause damage to consumers, and/or were in fact intentional.

COUNT II

CONSUMER FRAUDS COMMITTED AGAINST OLDER PERSONS

20. Paragraphs 1 through 16 above are incorporated herein by reference.

21. On information and belief, many of the Consumer Fraud Act violations for which the Defendants are responsible were committed against older persons, who are disproportionately at home when the telemarketers call, and thus such violations give rise to the additional civil penalty provided for in section 714.16A.

PRAYER

Plaintiff prays the Court enter the Consent Judgment negotiated, approved, and executed by the Defendant and by the Attorney General; however, if for any reason the Consent Judgment does not serve to resolve the instant litigation, Plaintiff prays for the following relief:

A. Pursuant to Iowa Code § 714.16 (7), and upon further request by Plaintiff addressed to the Court, enter a temporary restraining order and preliminary injunction restraining Defendants, and each of them, and (as applicable) such Defendant's directors, officers, principals, partners, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations and other entities acting in concert or participating with Defendant who have actual or constructive notice of the Court's injunction, from engaging in the deceptive, misleading, omissive, and unfair practices alleged in this Petition or otherwise violating the Iowa Consumer Fraud Act, and/or from continuing to engage in any solicitation of donations in Iowa or from Iowa.

B. Pursuant to Iowa Code § 714.16 (7), after trial on the merits, make permanent the above-described injunctions, expanding their provisions as necessary by including *inter alia* such "fencing in" provisions as are reasonably necessary to ensure that Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

C. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for amounts necessary to restore to Iowa consumers all money acquired by means of acts or practices that violate the Consumer Fraud Act, and/or to effectuate the charitable giving intended by Iowa consumers in donating such money.

D. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein.

E. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for up to \$40,000.00 for each separate violation of the Consumer Fraud Act.

F. Pursuant to Iowa Code § 714.16A, enter judgment against Defendants, jointly and severally, for an additional civil penalty not to exceed \$5,000.00 for each violation of the Consumer Fraud Act committed against an older person.

G. Award Plaintiff interest as permitted by law.

H. Pursuant to Iowa Code § 714.16 (11), enter judgment against Defendants, jointly and severally, for attorney fees, state's costs and court costs.

I. Grant such additional relief as the Court deems just and equitable.

Respectfully submitted,

Thomas J. Miller
Attorney General of Iowa

A handwritten signature in black ink, appearing to read 'Steve St. Clair', is written over a horizontal line.

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